1981

State of Utah v. Roy Hutchison : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF UTAH, STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff-Respondent,	:	
	:	Case No. 17663
vs.	:	
	:	
ROY HUTCHISON,	:	
	:	
Defendant-Appellant,	:	

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY

HONORABLE ALLEN B. SORENSEN, JUDGE

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by Amended Information with Forcible Sodomy; in that on or about the 18th day of October, 1980, in violation of Section 76-5-403, Utah Criminal Code, as amended, the Defendant engaged in a sexual act involving the genitals of one SCOTT HARRIS and the mouth of the Defendant without the consent of said SCOTT HARRIS.

DISPOSITION IN LOWER COURT

Appellant was tried in the Fourth Judicial District Court of Utah County, the Honorable Allen B. Sorenson, Judge, on the 19th day of January, 1981, the Defendant having waived his rights to a jury trial, and said Court found the Defendant guilty as charged. Defendant was sentenced by the Court on March 13, 1981, to serve

1-15 years in the Utah State Prison. Notice of Appeal was filed on April 5, 1981.

RELIEF SOUGHT ON APPEAL

Appellant respectfully requests that the Court reverse the judgment of guilty entered in the District Court.

STATEMENT OF THE FACTS

The State's Complaining Witness, SCOTT HARRIS, a minor, was a resident of a Boy's Ranch in Provo Canyon. On October 17, 1980, he had just returned from an out-of-town visit with his parents and had arrived late that night in the Provo Continental Trailways Bus building. (R., at 17) Defendant, ROY HUTCHISON, had spent the late evening of October 17, 1980, watching television and drinking liquor at his residence. Early in the morning of October 18, 1980, he walked about half a block to a telephone booth and made a phone call. There he met SCOTT HARRIS and invited him to stay the night at the Defendant's home. HARRIS admits he knew that the Defendant had been drinking heavily. (R., at 25)

The Defendant and the Complaining Witness spent some time drinking liquor and watching television at the Defendant's residence, before the Defendant passed out. (R., at 73-75) However, witnesses later found SCOTT HARRIS unclothed and huddled over a fire made of his own clothes outside.

SCOTT HARRIS'S further explanation of the incident is contained in a report made by the investigating officer of the Provo Police Department, ROBERT H. SMITH, October 18, 1980. (R., at 46-48) HARRIS indicated that the Defendant had dressed himself in women's clothing, and that he had got HARRIS "drunk" and that the Defendant had removed HARRIS'S clothing and had attempted to have anal intercourse with him. However at trial on January 19, 1981, HARRIS testified differently. At trial he claimed that the Defendant got him drunk, that HARRIS passed out and awoke when the Defendant attempted to perform fellatio on him. (R., at 20-22) When counsel for the Defendant attempted to have the Police Report introduced into evidence to impeach the credibility of the State's witness, the trial Court excluded the same on the basis of hearsay. (R., at 48-50) Defendant was then convicted.

ARGUMENT

POINT I

STATEMENTS OF A WITNESS CONTAINED IN A POLICE REPORT ARE ADMISSIBLE EVIDENCE AT TRIAL FOR IMPEACHMENT PURPOSES.

A. In many jurisdictions Police Reports are admissible as substantive evidence under certain circumstances.

Numerous jurisdictions take the view that Police Reports, where properly qualified, are themselves admissible as substantive

evidence at Trial without the testimony of the recording Police Officer, provided that care is taken to assure the trustworthiness of the information contained therein. Johnson vs. State, 253 A.2d 206 (Del. 1969); State vs. Ing, 497 P.2d 575 (Haw. 1972); Wells vs. State, 261 N.E.2d 865 (Ind. 1970); State vs. Taylor, 486 S.W. 2d 239 (Mo. 1972); State vs. McGeary, 322 A.2d 830 (N.J. 1974); People vs. Foster, 261 N.E.2d 389 (N.Y. 1972); Comm. vs. Russell, 326 A.2d 303 (Penn. 1974); and Gamble vs. State, 383 S.W.2d 48 (Tenn. 1964). The general rule in such states is that the Courts will not allow the admission of anything in the report which would not be admissible if testified to by the maker of the report. That is, all personal observations made by a reporting officer and written in his report are admissible at Trial, although statements made to the Officer by third persons are admissible in only limited circumstances.

B. Utah allows the admission of Police Report contents at least for impeachment purposes.

1. The credibility of a witness may be drawn into question by his prior inconsistent statements.

Utah Code Annotated, 1953, Section 78-24-1, provides in part:

> (I)n every case the credibility of the witness may be drawn into question, by the manner in which he testifies, by the character of his testimony, or by evidence effecting his charactor for truth, honesty or integrity, or by his motives, or by contradictory evidence ...

Certainly evidence of what the witness has previously stated to persons in authority constitutes contradictory evidence which will severely effect the credibility of a witness. Likewise Rule 20, of Utah Rules of Evidence, provides as follows:

> Evidence Generally Affecting Credibility. Subject to Rules 21 and 22, for the purpose of impairing or supporting the credibility of a witness, any Party including the Party calling him may examine him and introduce extrinsic evidence concerning any statement or conduct by him and any other matter relevent upon the issues of credibility.

The obvious purpose of Rule 20 is to allow the liberal introduction of evidence to impair or support the credibility of a witness as the case may be. Whenever any evidence bearing on the credibility of a witness can be introduced from another source the reliability of a witness's testimony can be more clearly ascertained. One of the most frequent objections to the introduction of evidence about a witness's prior inconsistant statements is that the statement was told to a third party by means of an out-of-Court statement, and constitutes heresay. Accordingly the first exception that the legislature of this State has made as to when heresay evidence may in fact be introduced at Trial is contained in Rule 63, Utah Rules of Evidence:

> Evidence of a statement which is made other than by a witness while testifying at the hearing <u>offered to prove the truth of the matter stated</u> is heresay ev-

idence and inadmissible at Trial execpt: (1) Prior statements of witnesses. A prior statement of a witness, if the Judge finds that the witness had an adequate opportunity to perceive the event or condition which his statement narrates, describes or explains, provided that (a) it is inconsistant with his present testimony, or (b) it contains otherwise admissible facts which the witness denies having stated or has forgotten since the making of the statement, or (c) it will support testimony made by the witness in the present case when such testimony has been challenged. (Emphasis added)

Evidence of a witness's prior inconstant statements, when offered to impeach the credibility of the witness and not to prove the truth of the matters contained in such statements, are admissible under the very first exception to the heresay rule.

2. A Policeman's Investigative Report made within the scope of his duty shortly after the occurance of a crime is admissable at trial.

Rule 63 (15), Utah Rules of Evidence provides as follows:

Reports and findings of Public Officials. Subject to Rule 64 and except for traffic accident reports, factual data contained in written reports or findings of fact made by a Public Official of the United States or of a State or territory of the United States, if the Judge finds that the making thereof was within the scope of the duty of such official and that it was his duty (a) to perform the act reported, or (b) to observe the act, condition or event reported, or (c) to investigate the facts concerning the act, condition or event and to make findings or draw conclusions based upon such investigation.

This Rule clearly contemplates that findings of fact made by

an Officer acting within the scope of his duty as well as his conclusions based on his investigation are admissible as evidence at Trial under an exception to the Heresay Rule. The Rule indicates that the Judge has the discretion to allow the admission of such evidence if the information is in written reports or findings made by a Public Official within the scope of the duty of such Official. Police Reports qualify as admissible evidence under this exception except for traffic accident reports, which are expressly not admissible. Utah Code Annoted, 1953, Section 78-25-3, states:

> Entries in public or other official books or records, made in the performance of his duty by a Public Officer of this State or by any other person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

Section 78-25-4, provides:

> An entry made by an Officer or Board of Officers, or under the direction and in the presence of either, in the course of official duty is prima facie evidence of the facts stated in such entry.

If a Police Report is held to be a public record, or if the Police Report is made pursuant to his official duty, the facts contained in such reports are prima facie evidence. That is, the facts stated in such reports could be substantive evidence at Trial and are presumed to be true until controverted by better

evidence. However in the case at bar the evidence contained in the Police Report was not offered as substantive evidence to prove the truth of the matters stated therein. The Reports were simply offered in a legitimate attempt to impeach the credibility of a witness whose testimony at Trial differed in substantial respects from the testimony originally given to the Investigating Police Officers.

Utah Rules of Evidence, Rule 63 (13) provides:

> Business Entries and the Like. Writtings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the Judge finds that they were made in the regular course of business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preperation were such as to indicate their trust-worthyness.

Courts and other jurisdictions, as noted above, have routinely allowed the admission of Police Records as substantive evidence. The business entries exception is one of the catagories under which Courts allow the admission of Police Reports at trial. Where the Police Report is prepared pursuant to the regular course and proceedure of the Police Department, and was taken at or about the time of the act, condition or event recorded, and were made under reasonably trustworthy circumstances, the contents of said Police Report should be

admissible as an exception to the Hearsay Rule.

C. The Trial Court abused its discretion in excluding the Police Report and Officer's testimony regarding the witnesses prior inconsistant statements.

In State vs. Young, 516 P.2d 1398 (Utah 1973) the Supreme Court of this State upheld the Defendant's conviction for Robbery. The Court found that there was no error in admitting the prior inconsistant and extrajudicial statements of the Complaining Witness about the identification of the accussed. The Complaining Witness had earlier told the Police that the Defendant was one of those involved in the Robbery, and that the witness had known him for about five years. However at a later lineup the Witness stated he was unable to identify the Defendant as being present at the scene of the crime. The Supreme Court upheld the questioning at Trial by the Prosecutor of the Witness as to his extrajudicial conversations with the Police Officer under Rules 20 and 63 (1), Utah Rules of Evidence.

In the case at bar the Complaining Witness also had prior extrajudicial conversations with Police Officers which he later contradicted. The Trial Court should have exercised it's discretion to allow the impeachment of the credibility of this witness, because of this change in testimony. When the State's

Complaining Witness, SCOTT HARRIS, made his report to the Police Officer on October 18, 1980, he alleged that the Defendant had attempted to perform anal intercourse with him, but made no mention of any purported incident involving the Defendant's mouth and the Complaining Witness's genitals. Conversely at Trial the State's Complaining Witness testified that he awoke finding the Defendant's mouth upon his genitals. (R., at 31) When counsel for the Defense asked the Complaining Witness about his prior statement to the Police Officers regarding the alleged anal intercourse, the Witness answered in the affirmative, but his answer was so indecisive that the Court did not require the Complaining Witness to explain it, (R., at 30). In other words, just at the point where the Complaining Witness began showing obvious signs of indecisiveness and uncertainty, the Trial Court required Defense Counsel to approach the matter from a different angle. The exclusion by the Trial Court of the proffered Police Report to impeach the credibility of the Complaining Witness was improper and prejudiced the Defendant.

In State vs Sibert, 310 P.2d 388 (Utah 1957), the Supreme Court considered a case where the Defendant had been convicted of Robbery. The Court ordered a new Trial because the Defendant's statement made to a Police Officer shortly after the crime was

admitted at Trial and offered to prove the truth of the matter asserted in such a statement. The Court said:

> The term heresay is applied to testimony offered to prove facts which the witness has no personal knowledge, but which have been told to him by others. He is thus not testifying from his own knowledge or observation, but is acting as a conduit to relate that of others. The general rule, to which there are admittedly many exceptions, is that such testimony is not admissible on the ground that it lacks trustworthiness for two basic reasons: (1) The person who purports to know the facts is not stating them under oath; (2) he is not present for cross-examination. Other reasons assigned for its unreliability are the danger of inaccuracy in the witness relaying what he has been told, and the fact that the jury does not not have the opportunity to see the person whose declarations are offered as evidence. However it is not every instance in which a witness relates what he heard someone else say that he is purporting to represent that the statement he heard is true. The purpose of his testimony may be simply to prove that someone else has made a statement without regard to whether it be true or false. Testimony of this nature does not violate the Hearsay Rule since the witness is asserting under oath a fact he personally knows, that is, that the statement was made, and he is subject to cross-examination concerning such fact. 310 P.2d at 390-391 (Emphasis added)

It is true that statements in a Police Report made by a Third Party to the reporting Police Officer may not be asserted as evidence at trial for the truth of the matters stated by a said Third Party. That would be heresay. But the fact that the Third Party uttered such a statement is a fact which the recording Police Offier knows first hand, for he has personally heard the

statement. And when that same Third Party is testifying at Trial and his testimony differed substantially from his prior extra-judicial statement, this prior statement is admissible to show the variance in the witness's testimony at Trial. In the instant case the Complaining Witness made certain statements to the Investigating Provo City Police Officer shortly after the alleged incident. The statements were duly recorded in a written Police Report pursuant to the practices of the Provo City Police Department. (R., at 45, 48) Later the State's Complaining Witness purported to describe the same events at Trial, but the statements at Trial varied significantly from his statements which he made to the Investigating Police Officer, ROBERT H. SMITH, immediately after the alleged crime. Therefore the admission of OFFICER SMITH'S report for the limited purpose of impeaching the State's witness was proper. OFFICER SMITH was personally present in the court room and could be cross-examined by the State. The Trial Judge's decision to exclude said report constituted an arbitrary exercise of his descretion and artificially allowed the testimony of the State's Complaining Witness to stand unimpeached. Because the only evidence offered by the State as to the elements of the alleged crime was the testimony of SCOTT HARRIS, his credibility became of prime importance in determining whether or not any

competant evidence existed upon which the Trial Court could find the Defendant guilty.

In State vs. Urias, 609 P.2d 1326 (Utah 1980), this Court affirmed the Defendant's conviction of Aggravated Sexual Assault and Aggravated Burglary. The Court found that the testimony of the Policeman relating the statement of the Defendant's girlfriend about the Defendant was a legitimate effort to impeach and discredit the testimony of the girlfriend at trial. In DeBois vs. State, 197 P. 176 (Oak. 1921) the Supreme Court of Oaklahoma reversed and remanded for new trial the Defendant's conviction for Arson. The State's case rested almost entirely on circumstantial evidence buttressed by the testimony of one main witness. The Trial Court had sustained the objections on the part of the Prosecution to attempts by Defense Counsel to impeach this witness's credibility. The Court found that it was competant and proper for Defense Counsel to cross-examine the Complaining Witness about his prior contradictory or inconsistant statements made out of Court. So too, in the case at bar, the statements made by the Complaining Witness to the Police Officers immediately after the alleged incident varied significantly from his testimony at trial. Therefore admission of that Police Report containing said statements should have been admitted at Trial for the purpose

of impeaching the Witness's credibility. Utah Courts have likewise held that a witness's prior inconsistant statements made to a Police Officer may be introduced at Trial to discredit the witness's testimony. See State vs. Stockton, 310 P.2d 398 (Utah 1957).

In State vs. Mores, 192 P.2d 861 (Utah 1948) the Supreme Court affirmed a conviction of the Defendant for Murder. In that case the Defendant had cross-examined the State's medical witness and attempted to show that the witness had changed his theory as to the course of a bullet that had killed the deceased, between the time of the Preliminary Hearing and the time of Trial. The Trial Court then permitted the State's witness to read a part of his autopsy report in order to show that the witness had not changed his theory. This approach is consistant with the Rules stated above which allow the introduction of evidence impairing or supporting the credibility of a witness. In State vs. Herrera, 330 P.2d 1086 (Utah 1958) this Court found that the State's attempt to impeach the testimony of it's own witness, a physician, by intimating that his earlier report was contrary to his oral testimony at Trial, without introducing the report into evidence, was prejudicial error. In the case at bar the Defense counsel sought to impeach the credibility, not of it's own witness, but of

> story. So we may recognize this third type of allowable contradiction, namely, the contradiction of any part of the witness's account of the background and circumstances of a material transaction, which as a matter of human experience he would not have been mistaken about if his story were true. (Emphasis added) 571 P.2d at 1355; citing Davenport vs. State, 519 P.2d 452, 454 (Alas. 1974)

Counsel for the Defense at the case at bar attempted at Trial to introduce prior extrajudicial statements by the State's Complaining Witnss which were inconsistant with his statements at Trial. These statements go to the heart of the issue of Defendant's guilt, for they were the only evidence which the State produced in support of attempting to prove the actual elements of the crime. Therefore these issues were not collateral, but constituted that heart of the State's case. The impeachment of the State's witness on these issues should have been allowed because he has given two different accounts of the occurances of the crime the Defendant has been charged with, which as a matter of human experience, he would not have been mistaken about if his story were true. Therefore impeachment of his testimony should have been allowed, and exclusion of such evidence by the Trial Court constitutes reversible error.

the State's main witness, and correctly sought admission into evidence of the Police Report containing the prior inconsistant statements of said witness. The Trial Court's wrongful exclusion of the Police Report for impeachment purposes crippled the ability of Defense Counsel to impeach the testimony of the State's Complaining Witness.

In State vs. Mitchell, 571 P.2d 1351 (Utah 1977) this Court held that the answers of a witness upon cross-examination of any irrevelant or collateral matter are conclusive and binding, and the witness may not be contradicted or impeached upon any immaterial or isolated matter at issue. The Supreme Court reversed the Defendant's conviction for Aggravated Robbery because the Trial Court had prohibited attempts by the Defense Counsel to question the credibility of the testimony of certain of State's witnesses, because they were under the influence of narcotics. The Court said:

> Suppose a witness has told a story of a transaction crucial to the controversy. To prove him wrong in some trivial detail of time, place or circumstance is "collateral". But to prove untrue some facts recited by the witness that if he were really there and saw what he claims to have seen, he could not have been mistaken about, is a convincing kind of impeachment and the Courts must make place for, although the contradiction evidence is otherwise admissible because it is collateral ... to disprove such a fact is to pull out the linchpin of the

POINT II

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT FOR THE TRIAL COURT TO CONVICT THE DEFENDANT OF FORCIBLE SODOMY

A. The Trial Court's exclusion of evidence impeaching the credibility of the State's only witness prejudicially affected the Defendant's substantial rights.

Utah Code Annotated, 1953, Section 77-35-30, as amended, Rule 30, Utah Rules of Criminal Procedure provides in part:

> (a) Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded.

The exclusion at Trial below of the Police Report containing the extrajudicial statements of the State's Complaining Witness, which were recorded almost immediately after the disputed incident, allowed the testimony of said witness to stand unopposed by any other competant evidence. The Defendant himself testified at Trial that he had no recollection whatsoever of any of the events which the Complaining Witness described. Evidence was presented on behalf of the Defense that the Defendant suffered from a condition known as Pathalogical Intoxication. (R.,at 55) Expert testimony was given that there was an eighty percent (80%) chance that the Defendant did not know what he was doing, had no memory of what he did, and was not capable of any criminal intent

to perform the acts of which he was accused. (R., at 61) The State's Complaining Witness was therefore allowed to describe the situation in whatever fashion he chose, without being contradicted by the Defendant or anyone else. Counsel for the Defense was prohibited from introducing evidence to impeach the testimony of the State's Complaining Witness by introducing evidence of prior statements by the witness which differed in material respects from his statements at Trial. Nor was the Defense allowed to elicit testimony from the Investigating Police Officer at Trial as to his memory regarding the Complaining Witness's prior statements. Since the testimony of the Complaining Witness at Trial was a reconstruction of events the witness could admittedly barely remember, and consisted of hazy and brief recollections of consciousness in between periods of passing out (R., at 20, 22, 32, 33) it is unreasonable to accord such testimony any great evidentiary weight. However since the Defendant himself was unconscious and unable to controvert the Complaining Witness's testimony, the Court's exclusion of contritictory evidence which would impeach the Complaining Witness's testimony artificially propped up and supported his account. Weak though such testimony may have been, it was the only evidence at all presented by the

State to prove the elements of the crime alleged. Therefore the Trial Court rendered a judgment against Defendant. However, had the Police Report containing the prior extrajudicial statements of the witness been admitted at Trial, even the Trial Court would likely have been compelled to acquit the Defendant because of the reasonable doubt raised as to the Defendant's guilt.

Utah Code Annotated, 1953, Section 76-1-501, provides in part:

> A Defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In abscence of such proof, the Defendant shall be acquitted.

The evidence presented at the Trial below was so weak and unconvincing as to appear unreasonable and insufficient as a matter of law for the Defendant to have been convicted. But this is further aggravated by the Trial Court's wrongful exclusion of evidence which impeaches the testimony of the State's only witness as to the commission of the elements of the alleged crime. In the Police Report the State's witness complained that he had little recollection of the occurrances at Defendant's residence after they began drinking, but the witness alleges Defendant attempted to perform anal intercourse with him. No mention was made of any alleged sexual act involving the mouth of the Defendant and the

genitals of the Complaining Witness at all. However at Trial the State's witness only described an alleged act of oral sex, and never directly or indirectly testified as to the Defendant's alleged attempt at anal intercourse. In response to Defense Counsel's question as to whether or not Defendant attempted anal intercourse, the Witness answered "Yes", (R., at 30). However the Trial Court could see that the Witness did not understand the question to which he had answered in the affirmative. The only evidence which the Trial Judge considered was the Witness's testimony at Trial. Clearly such testimony would have been weak and unsupportable as a matter of law had the Trial Court allowed impeachment, such that conviction would be impossible to all reasonable minds.

In State vs. Howard, 544 P.2d 466 (Utah 1975), this Court vacated the Defendant's conviction of Rape and remanded the case for a new Trial. The evidence established that the association between the Parties came about in a friendly and peaceful manner and the allegation by the Complaining Witness of a transition into violence raised a genuine and critical issue as to her consent. Because the Trial Court excluded proffered evidence about the Complaining Witness's reputation and moral character the Supreme Court found that there may have been a different result had such

evidence been allowed at Trial. The Court stated the test for determining whether or not an error was prejudicial as follows:

> ... (I)f upon looking at the whole evidence it appears beyond a reasonable doubt that there is no substantial likelihood that the verdict would have been different in the absence of the error, it should be disregarded. But the reverse proposition is also true: That if there is a reasonable likelihood that in the absence of the error, there would have been a different result, the error should be regarded as prejudicial. (Emphasis added) 544 P.2d 468, 469.

Had the Trial Court in the case at bar properly allowed evidence to impeach the testimony of the State's only witness as to the elements of the crime, there is a substantial likelihood that a different result would have been reached. Therefore the error by the Trial Court in excluding the impeachment evidence must be deemed to have been prejudicial, and the guilty verdict reversed.

In State vs. Eaton, 569 P.2d 1114 (Utah 1977), this Court reversed the Defendant's conviction at Trial for Distribution for Value of a Controlled Substance. The Defendant had appealed his conviction on grounds that, amoung other things, the Prosecution had made oblique but impermissible references to the failure of the Defendant to testify in his own behalf. The Court stated:

> Consistant with the nature of criminal proceedings and the protections accorded those accused of crime

> under our law, including the presumption of innocence and the burdon of the State to prove the Defendant's guilt beyond a reasonable doubt, we believe that, on appeal, when there is a reasonable doubt as to whether the error below was prejudicial, that doubt should be resolved in favor of the Defendant. (Emphasis added) 569 P.2d at 1116.

In the instant case there is a reasonable likelihood that in the absence of the erroneous exclusion of impeachment evidence by the Trial Judge the Court would not have been able to arrive at a verdict of guilty.

CONCLUSION

Because the testimony of the State's Witness regarding the alleged elements of the crime consisted of hazy recollections during intermittent and brief periods of consciousness, reasonable minds could not believe beyond every reasonable doubt that the Defendant was guilty of the crime charged. The evidence presented in support of that allegation was simply insufficient as a matter of law. The Trial Court's action in excluding evidence which would further impeach the testimony of the State's Witness, artificially propped up and supported that testimony. Defendant's conviction resulted from an error committed by the Trial Court which prejudicially affected the Defendant's substantial rights. Therefore Defendant respectfully requests this Court to reverse the verdict of guilty rendered against him in the Court below.

RESPECTFULLY SUBMITTED this 18th day of June, 1981.

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CERTIFICATE OF SERVICE

I hereby certify that I mailed two copies of the foregoing brief of Appellant to the Utah Attorney General, DAVID L. WILKINSON, at 236 State Capitol, Salt Lake City, Utah 84111, this 17 day of June, 1981.

Jackie Murphy

Secretary